



Registry Matters Podcast

Episode 160

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Andy 00:00

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Larry 00:23

Saturday night?

Andy 00:25

Oh, crap. That's right. Sunday afternoon. My bad. Sorry, a little bit of a time warp. (Larry: Yeah I think so.) What are we even doing that we had to push it back?

Larry 00:34

Well, I serve on the board of directors of NARSOL and we were doing our annual long range five year planning and reviewing budget. And it was a two and a half day, well, I should say two and a fraction of a day. We did Friday, Saturday and a couple hours today. So I would have had to, we would have had to have recorded very late last night if we had chosen that. And then we have a guest who was not available. So we moved it to Sunday.

Andy 01:00

And we still have like 100 people listening to us live in chat.

Larry 01:04

Isn't that amazing?

Andy 01:06

It's pretty awesome. Just put out the word and they show up. Do you want to give us a quick little rundown on what's going on tonight or today? Tonight, today?

Larry 01:15

Well, we're going to take some questions that we received from our listeners, or I don't know if I should refer to them listeners or readers when they come to us through the print side. But we've got some questions. And we've got a case from the United States Court of Appeals for the Seventh Circuit dealing with out of state registration in Indiana. And we've got the issue of polygraphs, and we've got a case that we've talked about on previous occasions. I can't say how many on the podcast out of the 10th circuit, dealing with those who are required to take polygraphs. That's a part of monitoring of probation and parole and supervised release and we have the actual litigant in that case, Brian Von Behren, United States v. Von Behren, 822 F.3d 1139 (10th Cir. 2016) is with us as a guest

Andy 02:00

Awesome. All right. Well, we will get to Brian in just a minute. And let's do this this first question, this should be pretty quick. It says:

Listener Question

To whom it may concern. My name is Patrick. And I was told that you may be able to help me out. I'm a registered PFR in the state of West Virginia. I'm inquiring if you would be able to help me find

out what the laws are regarding PFRs and registration in Ohio, Pennsylvania, and Texas. Also, if you would be able to get the information, what rules PFRs are subjected to while on parole and probation. I have 50 years, (Andy: That's a long time Larry.) of probation in West Virginia to complete and I'm looking to relocate no doubt. I have wrote to the respective states, and I've had no luck getting any information. And I have no one to help me get any info. Thank you so very much.

Andy 2:54

So I'm pretty sure I know the answer this one. But what do you think the answer is Larry?

Larry 02:56

Well, first of all, we appreciate the question, it got delayed to us because it was sent to our address in Raleigh. And all that does is it keeps mail from being processed. So if you're going to write to NARSOL, please write to the operations office in Albuquerque, and we'll get to it a lot faster. But having said that, I'm actually going to answer this. I think we're going to have space in the next issue of the newsletter, but I thought I would get started on the podcast. There's so many things in here that are relevant to everyone. And your, he's wanting to move out of state so clearly when he says he has 50 years, that means he would like to transfer his supervision. And since that's a state conviction, and not federal, he's going to have to go through the interstate compact for adult offender supervision. And he's been writing to states but as we've said on previous episodes, which he wouldn't have access to necessarily, they do not want you to come that is why they have not answered you. They do not want other offenders that are forced to register to come to their states to be supervised because in their calculation, that increases the opportunity for recidivism, and they have to explain why it happened on their watch. And they would rather it happen on West Virginia's watch than on their watch. So therefore, you're not gonna get a whole lot of interest in helping you find out how to navigate the process. But I'll help you. Your conditions that were imposed in West Virginia, they will follow you. You will not escape the 50 years of supervision, nor will you escape any single condition that they imposed in West Virginia. If the court said, gave you a list of things which they generally do at the time they imposed the probation, those will follow you. The state that you move to will be bound to impose all of those conditions and monitor them for compliance and report to West Virginia if you do not comply. So you will gain no advantage by moving. Now, having said that, if there is something in the state of West Virginia, that has been ruled unconstitutional in the state you're going to, they will tell West Virginia that they cannot enforce that. But that's, that's going to be a long shot, you know, they will not, they will not attempt to address the 50 years. That's not, that's not anything they're going to look at. But if there were something that was specified in your conditions of supervision, that have been declared unconstitutional in the state that you're going to, they would be notified that that particular condition are those conditions are unenforceable here, and then West Virginia would have the opportunity to remove them, or they would deny your movement to another state. In terms of the question about can we give you registration information about Ohio, Pennsylvania, Texas, it's not really feasible to do that because A) it changes every year. It's, so depending on when you're getting out,

there could be significant changes by judicial decision or by legislative enactments in those states, so that would be one thing. And then he wants to know about conditions of parole and probation, your West Virginia conditions are going with you. And you might pick up additional conditions in the state because they're allowed to impose conditions on you that are consistent with how they supervise PFRs in that state. So they could conceivably add additional requirements upon you and you're obligated to follow those.

Andy 06:32

So by moving while you're still under supervision, you end up with the worst case scenario of what you had and what you will have. And they're going to, to some degree combined, and you're going to end up with worse.

Larry 06:43

it is most likely you're going to end up with... we could set it up differently: you're not going to improve your situation. And you could end up with, or if you were to come to my state, I can assure you as bad as the 50 years is, is we don't have probation terms that long, but as bad as the 50 years is, you could have additional conditions that you may have not... suppose they don't have curfew in West Virginia for people under sex offender supervision, you will have them here. And they are bonafide and they will, you will have to follow them. Because if you don't follow them, they will report back to West Virginia that a special condition of supervision is being violated. And West Virginia is obligated on interstate compact to take that, take that violation seriously. And you could end up back in prison and West Virginia for violating a condition that was imposed in the receiving state that was not imposed in the sending state, in your case would be West Virginia.

Andy 07:43

There you go, Patrick, there is information for you. And I hope that helps guide you down the path for future. Larry, you said that she would take over introducing our guest. And so please go ahead with that.

Larry 07:58

Okay, welcome everybody out there in, I started to say radio land. I just can't break myself from that, from internet land. We have we have a special guest, which I don't think we've even done before. I don't think we have, have we had an actual party to a case on here before? We've had attorneys.

Andy 08:20

I don't believe so. Yeah, I don't think we ever have had the actual individual in the case, no.

Larry 08:25

So so this is a first. But this is such an issue that that will come up repeatedly because of its significance and relevance. So we've talked about polygraphs and whether they can do them. And we actually have a party to the case out of the 10th circuit, which is basically the Rocky Mountain part of the United States. The 10th Circuit Court of Appeals, our litigant and our guest is Brian Von Behren. And he was successful some number of years ago, and he's going to tell you how many it is but he was successful with getting a stay of he was ordered to take a polygraph test. And he objected on the fifth amendment grounds that he was able to get

a stay moments before the polygraph. And then he was ultimately when the when the case was resolved, it was resolved in his favor. So welcome, Brian, thank you for joining us this week on Registry Matters.

Brian Von Behren 09:24

Hey, thanks, Larry and Andy. Happy to be the first of the actual kind of litigants you have and hopefully, if cases continue to go our way you'll you'll have some more in the future.

Larry 09:36

So what year was this case decided? My senility is showing here. I don't recall what year it was. (Brian: '16) Yeah, I was thinking around '16. Yep. Okay. So well, Andy is going to be generous enough to to guide this part of the program because I, because of what I was doing over the weekend did not prepare. So I'm going to just sit back and jump in if I need to, but otherwise, Andy, it's all yours.

Andy 10:03

All right, perfect. Um, well, I guess we could just run through these quick little questions right off the bat and dig into some details later. Can you and I have great, great interest in this because I'm just all about some science and from where I sit, a polygraph is just a whole bunch of smoke and mirrors and you know, it dings and bells and whistles and whatnot. But can you describe how the polygraph how the polygraph works? Let's just start with that.

Brian 10:29

So it's, um, it's kind of interesting. Um, you know, the polygraph has been around for for quite some time. And it's definitely not anything that is allowed in most kind of criminal proceedings, as you know, Larry's pointed out before. But from what I've seen and from the research I've done, it does have some accuracy to it. I don't think that it should be used, obviously. But that has to do with more the kind of the way it's administered and kind of some necessary trickery that goes on on the part of the calligrapher. But when it's administered, according to the kind of plugger for standards, it actually is somewhat accurate. I've seen rates of anywhere from, you know, the false positive rates of as low as about 5%, in some of the studies I've seen, but that's really for, like, specific issue things. But for us, you know, for for PSRs, or PFRs, we tend to have either maintenance exams or sex history exams. And for those, the reliability drops pretty dramatically, you know, as evidenced by just the number of people who, you know, failed polygraphs and then it, you know, it's kind of hard to, you know, know for sure when it when it's a false positive when the person if the person doesn't admit to it, but there are the rates of of failures are much higher for for the sex offender community than it is for, say, like the CIA applications that they are used on.

Andy 12:00

I, I'm struggling with the the false positive rate of how you would actually know, how would somebody know... what would be the conditions that someone does administer a test where the false positive rate is that low?

Brian 12:17

The tests they've done, where they have an actual false positive rate have been controlled studies, where they have a person who doesn't, the person taking it doesn't know the answer, if they're if

it's true or false, but the person doing the study does. So they will ask them a question about something in their past. And then they'll know the answer ahead of time, and then they'll ask them anyways. And then if the person if, if the polygraph indicates deception, they know, and the person was telling the truth, because they know the answer to the question, then they'll consider that a false positive, but there's, you know, a bunch of statistical issues with those kinds of studies and things like that. So it's kind of it's kind of hard. And that's one of the reasons why some of the courts have been, you know, have, you know, held that they're not, you know, reliable enough to be introduced for, for most criminal proceedings so.

Andy 13:08

right, and I just wrote that question. I was like, why isn't it admissible in court?

Brian 13:13

So that I don't know the full reasons for it. I know, it's been a pretty long held, at least, you know, in terms of recent history. And I think I think there are there issues of just that reliability in some of those studies that were done. But I don't know the you know, exact reasons. It didn't, I know there that many for most courts, it doesn't meet the standards for expert testimony, or for an expert to be able to qualify and quantify and say that, hey, these polygraph results are valid. And, you know, this means that he was lying, and then those kinds of things. And I think the big part of it, too, is that I think when when the people I've talked to and myself when I first took the polygraph tests, I kind of assumed that I kind of knew how they worked. I'm like, Okay, I see what they're doing. And it turned out I was pretty much completely wrong on it. And I think that once I did some research, and once I kind of, you know, took them myself and kind of realized how they were working. It kind of, once you know, it opens up this intentional deception on the part of the calligrapher. And I think that the courts also know that and once that gets, once that gets introduced into courts, it becomes very hard to defend both the efficacy and the how effective they are, I think.

Andy 14:39

What does the polygraph then measure?

Brian 14:42

With a modern polygraphs, they measure four or five different physiological results. Almost all of them measure breathing and they also measure sweat in terms of the electrical conductivity of the fingerprints, heart beat, movement, how fidgety a person is. And there's a couple other ones, there's not a single any one set standard. But heart rate, breathing, and essentially sweating through electro conductivity are kind of the major ones. And then there's the (Andy: Blood pressure?), yeah. Um, I, yes, blood pressure as well, yes.

Andy 15:27

And they, when you start it, I'm trying to not jump too far ahead, when they start it, they give you all of the questions that they're going to ask you, right?

Brian 15:38

They do. They have, so the polygraph exam is divided into the interview, or the pre-polygraph phase, and then the actual exam,

and then sometimes, depending on how it went, a post interview phase, and the pre the pre-polygraph interview phase, that's actually, in a lot of ways, the most important part of it. That's where the calligrapher will go over the questions with you and make any kind of narrowing or broadening constraints to the relevant questions. The interview phase is also where you as a person taking it, your kind of goal in that phase is to identify what the control questions are. And that kind of gets into that, that deceptive piece that calligrapher is kind of trying to, to trick you into into doing there? And I can, I can go into a little bit more of that if you'd like or...

Andy 16:29

yeah, sure.

Brian 16:31

So um, for most polygraph exams, it isn't all of them. But the polygraph exams that follow the kind of, there's an association, American Association for Calligraphers or something like that. They have guidelines. And for both specific issue and more general exams, a lot of people think that what the calligrapher is doing, once he reads the results is he's comparing how you're breathing was, how fidgety you are, your blood pressure, your heart rate, he's comparing that to an absolute value. If it's above a certain amount, it means you're lying, if it's below a certain amount, it means you're telling the truth. And that's not the case at all. All of the readings are relative. And because every person is different, and what they're relative to are control questions, and I think that when you hear questions like, is your name, Brian, are you sitting down? Are you in an office? Those types of questions. People tend to think those are the control questions, and they're actually not, those are the irrelevant questions. The calligrapher asks you those kinds of things, just to make you think that he's calibrating the machine or he or she is calibrating the machine, or to give you more confidence in the exam itself. But the actual control questions are questions that to you sound like they're relevant, sound like they're meaningful, but they're issued in such a way that they are broad enough or generic enough or encompassing enough that they intentionally caused you to have some apprehension when you answer them. They're questions that aren't relevant in the terms of being scored. But they're things that will cause your breathing to be different or cause you to sweat more or your blood pressure to go up. And the idea is that when you answer those questions during the exam, those serve as your baseline, and then that's, your relevant questions are compared to those. And if you have a higher response to relevant questions, then you do the control questions. The question is scored as dishonest. And if you have a lower response to the relevant question than control question, then it's deemed as honest or or, or non-deceptive as they would say. And those control questions are fundamentally the key to everything in the polygraph exam. Because without them, they have no way to score the exam. And once a person knows what the control questions are, they lose their power. If you know that their question they're asking you is designed to cause a response in you, then you either can intentionally kind of bring up about that response or you can, you know, know that that's the level that you're comparing everything else to. And so for example, some of the like the common control questions you'll see in the maintenance polygraphs for sex offenders are things like have you kept any secrets from your probation officer? Or have you broken

any other law? You know, no matter how minor or what was the one I always liked, um, has any, have you had any contact with anyone you shouldn't have? (Andy: It's an awfully vague question.) Exactly. And they're supposed to be, you're supposed to be thinking like, oh, man, like, Am I keeping secrets from my probation officer? I mean, well, I'm not telling him everything. Oh, man. I mean, I haven't I haven't I haven't lied to him. Oh, but shit. You know, I'm sorry, I apologize.

Andy 20:20

It's fine. We're not that family friendly.

Brian 20:22

You know, but I didn't tell them that I was 15 minutes late for my job. They don't really care about that. Right? Does that does that matter? Oh, and you're like, ah, and and that's, that's the exact response you're supposed to have because if you are, you know, freaking out a little bit about a control question. And then they ask you, you know, at any time in the last six months, have you had contact with a minor that you didn't disclose to your treatment provider or something like that, then and you and you're like, Oh, well, no, I haven't at all. Well, that's, that's perfect for them. Because you your level of response to that question, which should have been somewhat, you know, triggering for you. Right? It's like, minors, you know, I'm in treatment I can't do that, was lower than your, did I ever, you know, was I keeping secrets from my probation officer. And and you would pass. Or you would score that question as non-deceptive. The problem comes about when, what if you really believed like to yourself like, no, I tell my PO everything, there is nothing he doesn't know about me. And you answer that with, you know, the calmest most straightforward manner, well, now, your level of your control question is really, really low. And now at best, if you answer the relevant question, you know, content with minors like that, it's going to appear so close to control question that's going to get a non-response that they can't score it. Or maybe you have just like a little bit of a, like, minors, or whatever, when you were sent that control question and now it's going to get scored as deceptive because your level of response to it was higher. And so that, that to me, once I kind of found that out about the polygraph exams, I got pretty well, I got pretty upset. Because, you know, in the context of treatment, especially for sex offenders, honesty, and confronting what we did, and all of those are very big components to it. And to have the calligrapher essentially trick me into being nervous or whatever you want to call it have the anxiety about a question in order for me to score the exam, seemed, well, it seemed unethical, honestly. And that kind of started my, my road to, you know, learning more about it. And then, you know, eventually, um, you know, challenging at least the the sex history questions in court.

Andy 22:40

Let's say that you have like a perfect, like you're just following the rules, everything is working the way it's supposed to. And we're talking about working with a machine that doesn't work. So I have to constantly flip my brain around in circles to have this conversation. But suppose you stick to your guns and you consistently tell them, I'm not lying. I'm telling you the truth. But it says you were deceptive on the machine here. I'm telling you the truth I didn't. I'm not being deceptive. Suppose you stick to your guns in that way. What happens then?

Brian 23:07

Well, it depends on what the context of the polygraph exam was. For me, and I'm speaking specifically for Colorado. Colorado's sex offender program is pretty much it's largely organized by the state. So individual treatment providers, um, have some latitude, but not a ton. But, and I think the experience, my experience in Colorado is pretty similar to a lot of other treatment providers, or probation polygraphs. Um, but they say, okay, they, you know, they tell you their face, okay. I mean, it could be wrong, which seems unlikely, but it could be wrong, you know, it's, you know, it hasn't really failed before, but, and then you have to retake it. And, you know, for instance, in the treatment programs in Colorado, if you were taking a maintenance polygraph every six months, then and you failed one, then you had to retake it within three months. And if you failed it again, then it was one month, and it went all the way down to weekly in some cases every two weeks. And they would essentially keep have it, you'd have to keep taking it over and over again until you either passed that specific question. Or you admitted to them what was you know, whatever you were hiding, and, and these are all...

Andy 24:21

Do you, I was gonna, I was just going to ask you who pays for it, if you have to keep retaking it?

Brian 24:26

The, in Colorado and n most states, the the person under supervision. Some states will put you in a payment plan if you can't afford it and have to take it but you have to repay the money. And for Colorado, there were \$300 I think they've gone up a little bit since then. But that was the kind of the standard fee for any of the four or five or six calligraphers that um, that I went to.

Andy 24:50

how much was it?

Brian 24:52

\$300 each.

Andy 24:54

Okay, so here it was, like 225 or 250 or something so you're a little bit higher, but so roughly in that ballpark. Larry, do you have any information that that pushes it in higher than that range?

Larry 25:05

Well, the contracted amount that the supervising entities get, that's consistent with what we hear. But now like if we were to contract with for a singular single test for, for our clients, we would pay about double that. The typical prices 500-600 dollars for a single polygraph, but they're, they're buying in bulk.

Andy 25:27

Oh, we get a bulk discount, love it.

Larry 25:32

You're benefiting from that. So they will, they will tell you they, they've negotiated with the provider for a volume discount.

Andy 25:41

Maybe we could get like some sort of PPO or an HMO or something to help pay for the polygraph. We could buy like polygraph insurance, get a group plan.

Brian 25:49

Side note in Colorado, the largest calligrapher provider sits on the sex offender management board and has full voting rights, everything like that, but I'm sure that he has, um, only the interests of the community in heart when he when he makes his decisions on how to vote and what regulations to add.

Andy 26:09

yeah, of course. What is the exam like for taking a poly?

Brian 26:14

So um, for the, for the maintenance exams, which are, you know, the ones I took, you know, most frequently...

Andy 26:22

These are like compliance ones, right? Making sure that you've been in by curfew, and you're not looking at naughty webpages, that kind of stuff?

Brian 26:29

Exactly. They are tied to conditions of supervised release, or probation or parole or treatment objectives sometimes. And they're typically anywhere from three to six relevant questions. The Calligrapher Association basically says that you shouldn't do a, a kind of maintenance style exam, with more than I think it's three or four questions. But typically, there's you know, that they go beyond that, the more questions a person is asked, the less relevant or the less accurate the exam is, kind of is. And that's kind of why some of the studies work out again, but the questions are things like, yeah, have you, you know, you access any internet capable device that you were not approved for? Have you, you know, left the state or, you know, the county or whatever your, your locations are without permission. You know, have you had any contact with minors that you haven't disclosed. If you if you have an alcohol provision, those are usually a big part of it, if you consume any drugs or alcohol, and then they're very, they're usually tied to a specific timeframe. So for the maintenance exams, if you take one every year, they're in the past year, or in the past three months, or whatever like that. And that's usually a good way to identify the control questions, a lot of times the control questions, loosen that timeframe, they go from the last six months to ever, or, you know, or they just don't, they don't mention altogether. Yeah.

Andy 28:03

One of the things that, like, troubles me with, with what you just started describing there is that they sort of fit into a timeline that says, Hey, have you had any drugs or alcohol since the last time you had your poly? And maybe you're taking them annually? Maybe you're taking them quarterly and like, crap, I don't know. I don't know, when I had my last drink. And just for the record, I don't drink anyway. So that's not really my issue. But I'm just, if you don't keep track of it, well, it was 73 days ago, and that's within the 90-day window, like how would you, it's really subjective and seems prone to get you jammed up and cause you

to then is pop the polygraph off the mark, and then you're being deceptive, you're like, nooo.

Larry 28:43

I would say wouldn't that be an issue you would deal with in the pretest interview? Like on the 73 versus 90 days, when they ask you have you consumed any alcohol? That would be something in the pretest interview because you have these questions. So you would say, well, let's be clear, we're talking about this interval. Isn't that something you could clean up in the pretest interview and formulate the question to be more relevant, more precise, and less open ended? Can't you do that?

Brian 29:09

Yes, definitely. The calligrapher will work with you during that pretest phase to apply whatever narrowing constraints that you know, he's kind of allowed to, you know, within the constraints of what the probation officer wants him to ask with what you say. So yeah, if you were saying, like, a years a long time, like, I don't really remember. I mean, I know, you know, you know, I know for sure that you know, since my PO told me, you know, nine months ago that I couldn't have any alcohol I know for sure. Since I haven't I haven't had it before that I'm in the plugger for would go ahead and say okay, well, since you, you know, since you know, February 18, or whatever, have you consumed any alcohol and they'll do that with you, as long as the question you're trying to clarify is not one of the control questions. And this is, this is another way to kind of find out what they are. If you're asking for clarifying or narrowing things on a control question. The calligrapher will make you feel stupid for asking that. If he asked you like, are you keeping any secrets from your probation officer? And you're like, I don't really know what you mean by secret? Like, could you you know what I mean, you know what I'm talking about? I mean, is there stuff you're not telling them? And you're like, um, I mean, what does that quantify? Like, you know, is it intentional? Like, you know, what a secret is, you've been in treatment, they're all about, you know, not keeping secrets. And and they'll they'll it's a complete flip on their part between when you try to clarify the control question when you try to clarify the the relevant questions, and it's, I don't know, it's, I've had a couple experiences where it's been kind of funny, just because there was a little too over the top, I think, and maybe the calligrapher wasn't, didn't have quite the acting talent that he believed he did. But yeah, for all the relevant ones, they'll they'll definitely narrow them.

Larry 30:55

Well, I like the point you're making because I had an off the record conversation with a calligrapher and he said it almost precisely what you just said. When you ask for clarification. They will sometimes embarrass you, and do a little theater to make you feel bad for wanting to clarity. So you, you're confirming what the calligrapher told me off the record.

Brian 31:17

Yeah.

Andy 31:18

And all of this is just I think this whole thing is, like, it's the opposite of the placebo effect. Here, take this sugar cube and make your pain go away. It's the opposite of that here, we're going to scare the crap out of you to get you to admit to doing

something, even though the Kabuki machine doesn't do a flipping thing.

Brian 31:36

I mean, I'm the primary benefit to the treatment providers, and I'm not saying that this is not a legitimate benefit to them or that it's something that you know, that is necessarily wrong, but it's that the the polygraph process is pretty effective in getting people in treatment probation to admit to violations of their conditions. You, if you look at the you know revocations in sex offender treatment, and for sex offender, probationers, a good chunk of them stemmed from things that people admitted on during a polygraph exam. And it's usually during the pre or the post phase that that happens. In some treatment providers treat a little bit differently. You know, for instance, it's less severe in Colorado, if you admit to something in the pre interview phase than if you lie about it, and I have my air quotes, my air fingers for quotes for that, and then, you know, reveal it, you know, when you're confronted by your provider or something like that, but that is that is the the purpose they serve. And they kind of cloud that when they talk about it in, you know, if it's brought up during a revocation hearing, or if a person challenges the requirement to take polygraph tests in their sentencing. You know, the, the treatment provider comes in and says, you know, this is a very useful tool, it helps, you know, offenders confront, you know, things they've done, by and large sex offenders are very secretive group who do horrible things, then hide them, and we need a tool to, you know, confront them and help them confront themselves on that or something like that. And a lot of it's BS, but there is a component there where it works to a certain extent, because people do get, you know, in trouble, because they...

Andy 33:21

because they believe it works.

Brian 33:22

Yeah. Mmhmm.

Andy 33:24

Someone in chat just said my argument is has any study or case ever shown that PFRs are more inherently deceptive to justify this extra level of scrutiny?

Brian 33:35

There have been. Nothing too recent. But there have been studies that back in the I want to say the one I read most recently was in the early 90s, and it was primarily normed on contact offenders, and it was when some of the polygraphs are being used, kind of initially, they weren't even a requirement. They were, I forgot the exact context of it. But um, they they found at least compared to the normal population, whatever that was at the time, that there was more general dishonesty in people who had contact defenses. And then there was some things that kind of refuted that study, or at least cast doubt on its methodology and things like that. But yeah, I think by and large, with current sex offenders, especially for the growing community of online offenders, that it's, and we don't we don't know, I think that the inference is that it is but I don't think there's any studies to back that up.

Andy 34:42

Is it legal or constitutional for courts, probation to order someone to take a poly?

Brian 34:47

100%. Yeah, time and time again, the courts at both the state and the federal level have upheld the requirement that someone on supervised release or probation or parole, has to take a polygraph exam. There's the legal questions come on what kinds of questions they can ask you or what kind of questions you can refuse to answer but as a polygraph as a whole, yeah, I'm not aware of any court that in the context of sex offender treatment that has said that the polygraph is so unreliable or so, you know, unethical or whatever, that a person doesn't have to take it.

Andy 35:27

Larry, can you add anything to that about the legality of it?

Larry 35:31

Sure. It would be it would be when realize, put in context, you have, you have been given conditional liberty. And with conditional liberty, additional intrusions are allowed into your life that would not normally be permissible. A regular citizen never has to submit to a polygraph pre-conviction. Yeah, they say, you hear all the time, the person was offered the opportunity to take a polygraph, and they declined. But these are based upon these are as a part of your conditional liberty, which you have less rights. That's how they're able to do drug and alcohol testing. As a normal citizen, they couldn't give you a drug test. I mean, your employer might be able to as a condition of employment, but as far as the police come up to you and say, I'd like to take a drug test, they can only do that in probable cause, if you are driving and exhibiting signs of intoxication, but this type of testing is allowed by the courts, because it's, it's your conditional liberty is, is, is something you don't have a right to. Therefore, it's a component to monitor your compliance with the conditions of your liberty. And the courts have said that attest upon it just just a simple test of a polygraph machine. It may not be completely accurate. But you can make the same argument about drug and alcohol test. Are they completely accurate? Of course not. False positives show up all the time.

Andy 36:53

My challenge there, Larry, is it doesn't matter, the person giving you the test there, you've removed so many elements of ambiguity from that. It doesn't matter how you feel that day, if someone does a little bit of a blood draw, and they do it. Like there is a predictable error rate. But the polygraph thing is fraudulent, like all the way from top to bottom. It's completely subjective based on the person doing it, and the person receiving it and how they feel that day.

Larry 37:21

Well, the courts haven't interpreted the science that way. So so you're you're you're barking up a tree that the courts don't agree with you on.

Andy 37:30

Yes, I understand that. Ready to be a part of Registry Matters? Get links at registrymatters.co. If you need to be all discreet about it, contact them by email registrymatterscast@gmail.com You can

call or text a ransom message to (747)227-4477. Wanna a support Registry Matters on a monthly basis? Head to patreon.com/registrymatters. Not ready to become a patron? Give a five star review at Apple podcasts or Stitcher or tell your buddies that your treatment class about the podcast. We want to send out a big heartfelt support for those on the registry. Keep fighting without you, we can't succeed. You make it possible. Brian, did you want to throw in something there with that?

Brian 38:25

Yeah, so I do think there is a little bit of a, some confusion surrounding what kinds of things a person does or feels or how they are, you know, react will affect how the polygraph exam is scored. And the calligraphers say, by and large, it doesn't matter if you're tired that day. Or if you had caffeine, or if you're, you know, depressed or anxious or whatever. And for the most part, it's actually kind of true. The only thing that matters is the difference between the delta, between your response to control questions and to the relevant questions. And things that tend to either increase your responses, like you know, your high strung and you just, you know, you know, downed you know, two Monster Energy drinks right before there and you're bouncing off the walls, that's fine for the calligrapher because it's going to raise the level of the control questions and the relevant questions roughly equally. And the same thing if you're, you know, if you, you know, people, you know, took some kind of sedative or you know, some some leftover pain medication or something like that, before the exam, it's going to lower the responses to both of them as well. And that kind of tends to also go along with, you know, psychological, you know, whether you're, you know, you know, have a lot of stress over it or things like that. They tend to kind of balance out and my experience, at least with people I've talked to more or less back that up. I haven't found any kind of like implicit kind of correlation between people failing more often who were, you know, tired or overly distraught versus people who, you know just went in there like a normal every day and took it? So I think it's kind of interesting.

Andy 40:11

Are you able to refuse the polygraph?

Brian 40:14

Sure you are. The calligrapher when you go in makes a very big point, at least in Colorado of saying this is entirely voluntary. They are not forcing you to do it. They are not strapping into the chair and they are not handcuffing you to it and the door is not locked, you can walk out and leave at any time. Now, of course, there will likely be consequences for doing that. And if we're asking, can you refuse it without legal repercussions, it really depends on how it's worded. If it's a condition of your probation or parole, then you very easily can be revoked or violated for refusing to take a polygraph exam. And this is I want to specify that this is you refusing to completely take it, you being ordered to do it. And you're just saying telling your PO or your treatment provider No, or just not showing up for it. There have been cases where people have been violated for nothing other than that. They have... they're not real common, they tend to usually have other kind of factors too. But I did read a case a few weeks ago, out of I think it was Iowa. It was a state case. But the probationer was violated. He was doing everything in treatment he was following his treatment provider came in and said he's doing very well he's participating in

his classes, he's made a lot of strides for you know, talking about his offense and things like that. And he just refused take the polygraph exam. And after the second or third time refused it, he got violated and the judge upheld it because it was a condition of his supervised release. And he went, you know, back to jail for for a few months. And at the federal level, it's the same way. If it's a requirement, from the treatment provider, and not listed as an explicit condition of your supervised release or probation, then it's up to the treatment provider to kind of do what they want to do. But ultimately, if the treatment provider says that you're not following their rules, and they kick you out of treatment, then that usually can trigger a revocation because you have a condition that says you have to participate in treatment.

Andy 42:19

A buddy of mine up the road from me, he this was around a holiday timeframe, this like five years ago, the the treatment provider said I need you to take this poly and he was working like eight bucks an hour, like manually, you know, like hauling steel tubes around in a factory or something like that. And they, they, they said, Hey, we need to take this poly and it's like, hey, look, I don't have the money for it. It's Christmas, bought some presents like, well, if you don't take the poly, then we're going to have to end your treatment and that'll revoke you. So his probation officer let him have like a bye and said, well, you can do it next month. But that was like, so he went off and title pawned his car so he could pay for the polygraph.

Brian 42:58

Yeah, I've come across people in Colorado with the same thing. You know, who were hit they had exhausted their kind of, their essentially, in Colorado some of the probation departments will on pay for treatment, or polygraphs or other kind of related costs for you. But there's a limit to it. And basically, if you know at that limit, if you're still not able to, you know, have work or whatever and pay it. It's that's kind of it. They say Look, I'm sorry, you couldn't pay it, you've been ordered to do it. And the calligrapher prefers not to do for free and I've known people who've been terminated from treatment in Colorado because they were ordered to take a polygraph and couldn't do it for financial reasons. Yeah, it's it's, it's, I get extremely upset when I hear stories like that. So.

Andy 43:47

yeah. Let's let's try and compress some of these down and just maybe two or three more questions. Do calligraphers have to be licensed?

Brian 43:55

They do not in most jurisdictions, most jurisdictions that I know of. In Colorado, they don't. They don't, at least in terms of the state having regulations saying you have to be a licensed calligrapher to be able to practice in Colorado. But the Colorado's sex offender management board, they will only refer state DOC inmates to calligraphers who are licensed under the National calligraphers Association, whatever. But that licensing is at least from from I understand, they kind of keep their requirements kind of close to their vest, um, in terms of what it takes, but it's not that hard to do. And this, they don't want a lot of calligraphers in the state because of course that you know, divides the, the pie up too much. And then they're not, you know, not able to it's not as

lucrative for the individual ones, but I don't know of any states that require licensing as a regulatory body.

Andy 44:56

All right, let's see. Let me see. What happens with the results, like we've seen, everyone's seen on TV where they have the little like heart rate EKG monitor, where it's like scribbling all over the place when you are lying and whatnot. Is the individual allowed to see those results?

Brian 45:13

Apparently no. And I, this is one of the one of the things that shocked me the most when I started taking them, and everyone I've talked to, if you if you take them privately, of course, you know, you know, kind of, you know, as Larry referred to earlier, you'll, you'll get them. But if you're ordered to take them, your treatment provider can see them and your probation officer can see them, but you usually cannot. Unless there's some kind of legal proceeding. And of course, then at that point your attorney can request them as as evidence and then you can see them that way. But the calligrapher says they can't cede them to you because it's against treatment modalities or something like that. And I it's my belief is that they don't want you to see it, because the the way they score it indicates what the control questions are. And once you know what the control questions are, by looking at the results, obviously then the other the you know, the future tests become meaningless.

Andy 46:15

Because I'm wondering if you could then get those results and hire your own legit god, I can't I hate even saying those words, then you can hire your own and say, well, no, I challenge these results because this credential calligrapher, you know, I went to the Harvard School of calligraphy. The same, it hurts me every time I say these words, but how would you even be able to challenge it, if they own the Kabuki machine and they own the results and they're saying that you lied, you wouldn't have any way to defend yourself.

Brian 46:38

in Colorado, you can do that. That is one of the things that the sex offender Management Board has has provisions in place for, but you so you could, you can request another calligrapher to review the results. And so most of these are machine the results are, are analyzed by machine by algorithms that then spit out you know, deceptive, non-deceptive, or no opinion for each question. And then the calligrapher using his vast experience and knowledge of human behavior and all the other things they went to the Harvard School for, you know, certify those results, or occasionally will say, and the computer said, you know, you know, non-deceptive, but I know this guy, and I can tell bla, bla, bla, and then they'll override it. You can have the raw results along with the commentary of the scoring of the, you know, the written report sent to another calligrapher that's in the state, at least in Colorado, and then they can either confirm or, or, you know, or, or say no, I think it was wrong. I've never seen I know of maybe a dozen people who've done that not once has the second calligrapher overturned, or, or, or said anything remotely bad about the first guy. Because, you know, they're they're a very small, small, tight knit group of people. And, you know, they're not gonna they don't want play one off each other. But but it's the you're never you're never going

to see it yourself. It has to all be sent electronically, you know, and stuff like that.

Andy 48:05

it's one of the tops of the piles of pseudoscience from everything that I study about science. I only have one more question. Larry, do you want to throw in anything before I ask the final question?

Larry 48:16

Well, I I found this to be fascinating. I think we'll probably end up having him back because this is going to generate a ton of questions from people after after they read the transcripts and hear this episode. So yes, I think I'll pass but it's been fascinating.

Andy 48:32

So that leads me to my one last question is do you believe it's an effective way to determine if PFRs are following the rules if they're being compliant?

Brian 48:41

It's not. Mostly because of the fact obviously, that, you know, I, you know, I'll say that I took you know, in my three years of treatment, at one point I was taking one every three months, I took quite a few of them. I was never dishonest. But I was also never after that first after the first one. I took it, I kind of realized this. I was never I never had any kind of concern whatsoever of doing it, it was just a routine for me. Like, okay, God, here's another 300 bucks, whatever.

Andy 49:07

You took them every quarter for four years. So you took what 16 ish?

Brian 49:11

Well, since Yeah, so not quite, I actually had my treatment was interrupted while my case was being, you know, appealed, due to the stay, and so I wasn't in treatment for that period of time. But then afterwards, magically, once the 10th circuit decided my case, my treatment provider immediately switched from ge can't be in treatment because he's refusing to take the polygraph to Oh, well, I guess we'll maybe let him back in now. I'm sure they had to had my my well being at heart. But yeah, within within a few days of the appellate decision coming out. I was re enrolled in the same treatment program that had threatened to kick me out and violate me and actually had kicked me out. Yeah, you know, didn't end up getting revoked. But, um, but yeah, and it went back in there every three months because I was, you know, using a computer for for work and whatnot and that, you know, to them increase the the risk factor for it. Yeah, I know, I know, kind of running short on time here. I do you want to caution one thing, which is that for people who are actively in treatment, I think you need to make an individual determination on whether or not to attempt to kind of know, the control questions, people are able to pass a polygraph without doing that. The treatment providers, especially in Colorado, are extremely, extremely sensitive to any allegations of tampering or, you know, or, you know, doing things to throw the machine off and things like that, and people who have knowledge of how it works. And when providers become aware of that, it you know, it can, it can switch from, you know, very friendly congenial to, you know, what are you trying to hide? You know, how why would you ever know, this, all this kind of stuff.

Andy 51:11

A fortune teller gets angry at you, too if you know how to read your, you know, do palm reading, they get very angry at you and you know how to do their stuff. Larry, what did you have?

Larry 51:21

It just occurred to me when I was as I was reflecting on a something he said about the increasing, we typically tell people on the podcast, if you've told the truth, and they tell you that the polygraph has shown deception, all I encourage you to do is to continue to say, I've told the truth, I can't explain it, because they ask you to explain why you're showing deception. And you just tell them, I can't explain that. But you've interjected something that never has come to my attention before. If they simply continue to increase their frequency of polygraphs, because the machine says deception and you insist you're telling the truth and you stick to your guns, it sounds like they will eventually bankrupt you.

Andy 52:04

Correct.

Larry 52:05

If, if you're earning \$9 an hour, and they they increase it from quarterly to monthly to weekly. At some point the \$9 an hour will not cover it and they will, they will get you that way because they will bankrupt you and I think there might be a legal cause of action here that that has been unexploited. No attorneys ever thought of. That, that they're deliberately in order to get the answer they're looking for that they are going to put financial pressure on you that you cannot withstand.

Andy 52:37

I'm with you. I like it, Larry, run with it.

Larry 52:42

Did we lose Brian?

Brian 52:44

No, I agree completely. I think the financial burdens of treatment in general, are some of the hardest, you know, pain points. And it has gotten a little bit better in Colorado, but um, and some elsewhere I've heard. But yeah, I mean, you know, these are for profit companies administering polygraph exams and for and generally, you know, for profit, private, you know, treatment agencies who are administering it, and amazingly enough, they want to get paid for it. And, you know, when they can exert that financial pressure to also increase their treatment goals. I mean, it's a win-win for everyone, right? Except for us, you know, who are really the, you know, the clients who are this are supposed to be the ones benefiting from all this. But um, yeah, I would say the financial issues were the most common reasons for people having problems in treatment, or sometimes just, you know, getting kicked out of it.

Andy 53:39

So that leads us down to that this almost creates a debtors' prison and or it's extortion.

Larry 53:45

Well, what we're gonna do is I'm going to take some time to read *Bearden v. Georgia*, which is the last case I remember the US Supreme Court ruling on it's been decades ago, about inability to pay. And if a person doesn't have the ability to pay, we might we're definitely going to have to come back on this issue. And but it sounds like this is a potential *Bearden* claim to me.

Andy 54:07

Excellent. And, Brian, if you would stick around, I have another question from a listener that came in via letter and you can if you look over in the, if you can see the screen that I have over in the live stream chat, then you can follow along if you want to. But Larry wanted to beat this around with you for a minute. So it says:

Listener Question

I hope you all had a great holiday. I write to you regarding an issue I don't know how to solve I was released from Fort Dix, New Jersey in August. According to my conditions of release, I had to attend a court order therapy, which I'm doing. The first day of therapy, I was handed homework, sex offender disclosure questionnaire. I'm not sure if you're familiar with this document, or if it can be accessed entirely online. But this is the most demeaning, arrogant dehumanizing thing I've ever subjected to. I don't think I'm sensitive but having been incarcerated. Fort Dix, a notorious PFR, hunting ground by inmates and staff. My questions like How many times did you have sex with dead animals? And did you ever kill someone during or after sex? are just some of the myriad of questions which further dehumanize me. To me this was filthy and was as bad as a therapist who said that my disliking this questionnaire was my opinion. And there was a pro necrophilia faction, or the PO, who discouraged me from attending the gym because I might drag a kid in the shower like a lion dispatches a zebra at the waterhole. Um, so, Larry, that's a very disturbing letter that we received. And what did you want to dig into this with Brian about?

Larry 55:46

Well, this is this is the sexual history questionnaire, which was at issue in this particular case? He, so when you got your sexual history questionnaire, how much did it resemble this type of questions?

Brian 56:03

Very, very much so. I got a call if there was anything about necrophilia on there, but there were definitely questions on sexual contact with animals. And it was very detailed, it wasn't a questionnaire, it was a packet and they called it that and it was, I don't remember 15-20 pages, something like that. And yeah, it was a full, you know, every encounter every behavior during those encounters, you know, since since since you have in living memory. And yeah, you know, and, you know, I am I am not an attorney, of course, but um, I encourage anyone who has any of these kinds of questions to refuse to answer any of them that would implicate a criminal offense. I think it's as simple as that. If they're asking you questions about legal sexual contact, that's kind of up to you on, if you want to answer those, and what the repercussions would be if you didn't, but as far as I know, not all of the Federal circuits have reached an answer to the question of, can they ask you incriminating questions on a sex history polygraph, but the ones that have asked it have more or less fallen

along with my case. I know the Ninth Circuit has reached the same conclusion, the 10th. And there's a few other ones that they've kind of worded it in different ways. But by and large, I haven't seen any recent cases where they have attempted to prosecute someone for refusing to answer or for invoking a fifth amendment right. So, I think it's, it's becoming somewhat well established, just maybe not well known that you can refuse to answer those, those incriminating questions.

Larry 57:48

So well, I found those questions to be very, very distasteful. But anyway, Brian, we will, we will have you back again.

Andy 57:57

I guarantee that. Thank you so much, Brian. I appreciate it.

Brian 58:01

Anytime. Thanks, guys. Awesome show. Thanks for amusing us.

Andy 58:05

Thank you very much. All right, Larry, then let's, uh, let's move on to this other little shindig that you got going on. And I almost want to set it up by asking this question from our listener. Is that a halfway decent way to set it up? Or do you want to set up the case and all that?

Larry 58:21

Oh, you can you can ask the question. Sure.

Andy 58:24

All right, so one of our patrons that says patron Mike from New Jersey:

Listener Question

Can Larry explain this in English when he gets a chance? Does it say what I think it says for people convicted before 1994, which includes me, it seems that as I read it, if a person that has an offense before SORNA, Indiana will not force them to register. And so that was a question from a patron who put this in here. And you guys were not working together but doing the same thing. This is a case out of Indiana, apparently, and it was 61 pages that I haven't had any time or interest in reading. And I'm guessing that you feel it's relevant to PFRs. So, tell us what's going on.

Larry 59:02

Well, it is indeed relevant. And we're gonna we're gonna do a shortened version of it, because I haven't had time to thoroughly analyze it. So we'll address the high points. But this case is result of Indiana being a little bit too cute in how they decided to apply the law after a very important ruling from the Indiana Supreme Court in 2009 in *Wallace v. State*. And in fact, that ruling was one of the earlier victories for PFRs goes way back to 2009.

Andy 59:35

And when you say they're trying to be too cute, and they're trying to circumvent the *Wallace* ruling, what what is the *Wallace* ruling?

Larry 59:44

Well, the *Wallace* ruling was the was a finding that it was that registration. Well, let's just talk about *Wallace* and then we'll get back to it to it but the the *Wallace* ruling was the result of many

enhancements which states just cannot help themselves from doing. They had souped up the registry exponentially from when it was created. And the the that decision decided that they had gone too far. And the Seventh Circuit basically cut and pasted from *Wallace* and they put in that registration, and I'm reading now, registration requires more than simply appearing at the sheriff's office. The person registering must be photographed, and provide information, including the name, date of birth, race, height, weight, hair color, eye color, identifying features, such as scars and tattoos, social security number, driver's license and state identification card number, vehicle description and license plate number of any vehicles the registrant might operate regularly. Principal address, name and address of any employer and educational institution, any electronic email address, and instant messaging usernames, any social networking website username and the dangerous catch all, quote, any information required by the Department of Corrections. And that is a far cry from what is a part of your conviction. And as you've heard me, say, for the last three years on this podcast, if they were merely registering information about you, relevant to your conviction, meaning stuff that was known to the court, like what you look like your picture, what you were convicted of, and they said go on and have a great life, you're registered, they could probably do that in perpetuity, but they can't stop at that they just can't help themselves to put all these requirements. So in addition to the information I just read, this stuff is posted on the website, and you have 72 hours to report if you change any of this information, including any anything related to the internet, if you create a – the court referenced a Pinterest account – what is that?

Andy 1:01:56

Yeah, Pinterest, it's like a photo sharing website. People do a lot of recipes or craft stuff on Pinterest, just another social networking website.

Larry 1:02:04

So so that was the case from 2009, where the Indiana Supreme Court said you've gone too far. You can't apply all this stuff to people whose whose conduct predated the registration. And so Indiana decided that in order not to have an influx of sexual offenders from other states, which no state wants that, that they were going to interpret *Wallace* in a way that would keep the floodgate close. So if you move to Indiana, they they had even before was about 2009, they had put a catch all provision in Indiana statute that if you relocate the Indiana, and you have a requirement to register in that state, or if it's equivalent to an Indiana offence, you'll have to register in Indiana, despite this. So basically, they created two classes of citizens. If you had an old sexual offense, and you never left Indiana, you were just fine under *Wallace*. But if you left Indiana and came back, and you registered in the state that you were that you that you're after you're leaving Indiana, because remember Indiana's court ruling is only valid there. So if you moved to another state, and you got on their registry, then you were coming back being required to register in another state and some of these challengers that had that situation, or people who had just relocated to Indiana, they said, well, what about us? They said the law doesn't apply to you. Our law says that if you move here, and you have an obligation to register anywhere you have an obligation to register in Indiana. So that's what this case was all about. And the Seventh Circuit said no, doesn't work that way.

Andy 1:03:53

Does that introduce an equal protection issue under the Constitution? How is it that a state can require you to register simply based on what a previous state required when you lived there? I thought a person could travel freely and enjoy equal treatment from state to state though.

Larry 1:04:07

Well, that's what the challengers asserted, in fact, and that's what the Seventh Circuit concluded that absolutely you can you can travel to Indiana, having an offense that requires you to register in another state. And that state's obligations do not magically transfer to you in Indiana because the Indiana law would not have recognized you as a sex offender if it's not equivalent. So they said that very thing. And they also said that since you have a freedom of movement, if you leave Indiana and decide to come back, somehow or another that doesn't reimpose an obligation that had already been jettisoned by a previous Supreme Court ruling. So this is a fantastic decision. Fantastic. This is fantastic in terms of its potential reach, so this could impact a large number of people. But now keep in mind the people this will impact cannot grow. It's a decreasing number because you would have to have an older offense. You can't roll back the clock or something like that. You can't roll back the clock and have and magically have an older offense. I guess you could, if there's no statute of limitations, and they prosecute you for something old. But as a general rule, this is going to have have a diminishing cohort of people that this applies to. But you can, under this ruling, live in Indiana, if you have an old conviction, and they cannot require you to register.

Andy 1:05:40

Were any of these judges appointed by Trump?

Larry 1:05:43

Well, what do you mean by appointed by Trump?

Andy 1:05:46

I guess during the four years of his term that he would have nominated them, and then the senate confirmed.

Larry 1:05:55

So well, yes that so let's be clear, this was a three judge panel, because that's an appellate decision from the Seventh Circuit. So, in fact, one of them was appointed by Trump. But she had already been a district judge, which is the lower level, the trial court level, she had already been appointed by President George W. Bush. And she was the dissenting judge. And then of the two remaining judges, one was appointed. They we have a bipartisan one was appointed by Clinton, and one was appointed by Reagan as a district judge and was elevated to the to the Court of Appeals. So we had a two to one decision, there is a dissent. I have not read the dissent. I will read the dissent by the time hopefully we come back next week, because in this particular case, it could be relevant, because this is not necessarily a final stop.

Andy 1:06:46

Okay, and what will happen next then? Will Indiana file next to try and get the Supreme Court to hear it?

Larry 1:06:53

I don't think so. But I'm not sure. I'm hoping not. My recollection is that *Wallace* that the Supreme Court decided *Wallace* based on the Indiana constitution, but Wallace is so old, I'd have to reread it. But if they decided that based upon the state constitution, they will have boxed in the federal court the same way that in Pennsylvania when, when the Pennsylvania Supreme Court said - or was it the Michigan? - but I think it was Pennsylvania, but they said don't bother trying to do this by your interpretation of the Constitution because our constitution provides a great level of protection, therefore, we're interpreting it under the US and the Pennsylvania constitution. Well, if my recollection is correct, and they interpreted the Indiana constitution, then the Supreme Court doesn't have a final say if Indiana chooses to provide citizens greater protections than the US Constitution.

Andy 1:07:47

I do believe that covers the whole thing.

Larry 1:07:54

No, you missed one. It was more me missing it. But there is there is another theory that they can put forth. And and they could put forth that there's an independent federal obligation to register under the Adam Walsh Act. And that would be more likely what they would do, they would cite to this to the Sixth Circuit, although it's not binding, they would say well look at this marvelous decision from the sixth, which was out of Michigan. And they would say that there's an independent duty to register under federal law. And therefore these people that move here, they have traveled in interstate commerce, and they have a federal obligation to register. And therefore, we still can't release them. That would be the argument that they would most likely think of and believe me, folks, if I can think of it so can they. So I'm not letting any cat out of the bag. That's what they're going to argue. That would be what I would expect them to pull out of their hat would be to assert that there's an independent federal obligation. So if they do follow cert petition, that's what they would put in the cert petition. They would, they would skirt the Indiana constitution because they wouldn't try to tell the Supreme Court United States to interpret the Indiana constitution. But they would say notwithstanding the Indiana Constitution's interpretation, there's a federal obligation to register. And then the US Supreme Court, if they were to grant cert and review the case, they would tell us whether there's an independent federal obligation register, and being that we have a conservative Supreme Court, that definitely wants to help the PFRs I have no doubt it would be six to three in favor of there's no federal obligation, because that's just what they would do.

Andy 1:09:25

You're not being facetious are you? Sensing a little bit of sarcasm?

Larry 1:09:29

Not at all Andy. Not at all. And they very well could do that. We cannot predict what courts are going to do based on conservative versus liberal but, but that would be the likely arguments they would put forth in their cert petition if they were to file one.

Andy 1:09:45

I see. Anything else you want to talk about PFR related and before we, I have this, like nice endearing letter to read and then a couple

of things. Is there anything else you wanted to do before we get ready to close the doors?

Larry 1:10:00

I think I've done the best I can with the quick read I've done of this case and hopefully we can develop it further and come back to it next week or follow it up in a future episode.

Andy 1:10:12

All right, well, then I would like you to cue the heartwarming music, it says, Dear Andy, and Larry and the team, I guess, just as Dear Larry and the team, I don't get even a mention in this letter. A couple of months ago, I requested a sample transcript of Registry Matters. I really liked it. But I thought \$10 a month was too much and time went on and for some reason, I continued to receive your transcripts. I don't receive much mail, so it's been nice getting the transcript every week, then you lower the price to six bucks a month and I have been on the fence, then I got a Christmas card. After almost five years incarcerated the amount of Christmas cards I receive each year declined more and more. For you guys to sit down and send a card to not only to subscribers, but to someone who only requested a sample a few months ago means a lot to me, and I'd like to subscribe for however long 50 bucks will get me. Please continue to keep up and really give hope at the same time. Just wanted to share that with people. I know I'm so mistreated. Thank you, I appreciate the acknowledgement that I'm mistreated. Just wanted to highlight that someone wrote in a very nice letter to us to Larry, and then me just as an aside.

Larry 1:11:17

so well, I like to part about keep it real, but give us hope. And that's what we try to do. And and the reason we were sending the transcript is I really have a soft spot for people who have who have served the country. And I feel like that the department, the military, the Department of Defense has been over the top and in prosecutions. And that not just military, but but they have been over the top. It goes without saying in this business. But I wanted to make sure that he had a full understanding of the scope of what we cover on the podcast. And I was hoping that he would like what he saw. So I kept sending it to him as kind of a sales, it was a sales ploy and see see if we could if we could get him addicted. But as we go forward, we're hoping that we can provide services to those who can't pay for them. And that's our goal for the nonprofit, that people, kind of like what the NARSOL model where we provide subscriptions to people who are indigent.

Andy 1:12:18

Sure, just just to highlight that though, that if you have 3,4, 10 people in the dorm, and you guys want to all get together, we don't care if you share it around the dorm. I mean, we don't need to have 10 subscriptions going to 10 different people in the same dorm, please feel free to collect enough money up to support it. I mean, that's that would be perfectly okay even share it across the whole compound if you can. We'd be perfectly be happy with that. Because then once most of these people that are listening to this on the inside are going to get out. Otherwise this really doesn't matter much. But so that you would come join the team and join the fight for when you get out. That's that's definitely one. We're trying to indoctrinate people Larry.

Larry 1:12:56

Absolutely. We're hoping that we're hoping that they can become patrons when they're on the outside at some level. And we're hoping that they can join the effort to push back. And so we have several motivations and but I'm glad that he appreciated the cards. We put lots of work into doing that. And I got one criticism, one person shredded the card up. But we've gotten more more compliments. Yeah someone, my heart was palpitations. I said, my goodness, we got this, and I thought that someone had handmade a gift for us. You know, you know, they, they make these cellophane picture frames, and they do all these creative things. And I thought, well, you know, this is a puffy envelope so there's something good in here at all. And all it was was the cards that we had sent both from the organization and from Registry Matters. They were shredded. He had the torn them into pieces, and that had made the envelope puffy. So my ego went flat after I got that back along with an ugly letter saying, why did you send me this Christmas card?

Andy 1:14:00

Wow, that's I mean, like even me and my staunch stanza loving, I would be like, wow, that was very nice for you guys to send me a card. I wouldn't have like torn it up. Wow. That's interesting. That wasn't the person in Atlanta that we know, right? That wasn't that guy was it?

Larry 1:14:15

He made sure that we understood that it cost him money to send it back to us and he felt that strongly about it.

Andy 1:14:23

That's frickin crazy. All right, then. Well, then, so we can we can highlight that we got a new patron named John, but he's actually an old patron. He's like a returning one. And so thank you very much for coming back, John. I think there may have been some revocation issue in there. That's why he skipped down on being a patron for a while. And then to my good buddy pal Shane and he increased his patron by more than threefold and thank you my friend and congrats on the house. And otherwise, Larry, we can we can shut the show down by just go visit us over at registrymatters.co. And that's, you can find all the show notes, links and all that good stuff there. That's all I have for the evening Larry.

Larry 1:15:02

Do not forget when you watch us on YouTube to put what is that, you check like?

Andy 1:15:09

Oh yeah, do like and subscribe and hit the bell to get notified, all that happy stuff.

Larry 1:15:13

Yeah because we're trying to drive that algorithm, however it works. We need more likes we need more subscribe subscribers and we'll eventually have people flooding our way if we have more views on YouTube.

Andy 1:15:28

Very good. That's all I got Larry. I hope you have a great rest of your afternoon and Happy Sunday and have a good week. I'll talk to you next week.

Larry 1:15:35

Thanks Andy and good night, everybody.

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